

DETAILED ACTION

1. Applicants' preliminary amendment of 06/06/2005 is acknowledged. Claims 3, 6, 7, 8, 9, 14, 15 and 16 have been amended. Claims 12-13 have been canceled. New claims 17-22 have been added. Claims 1-11 and 14-22 are pending and under consideration.

Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-3 and 8 are drawn to a method of screening or testing for candidate antifungal compound that impairs BPL1.

Group II, claim(s) 4-7 are drawn to modified eukaryotic cells.

Group III, claim(s) 9-11 and 17 are drawn to a compound.

Group IV, claim(s) 14-16 and 18-22 are drawn to a method for treatment of fungal infection.

3. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature-linking groups I-IV appears to be a method of screening for novel antifungal compounds that impairs a fungal essential gene and protein.

However, Spaltmann et al. (DDT, vol.4, no. 1, January 1999, prior of record, applicant's IDS of 09/01/2005) teach a method of screening for novel antifungal compounds that impairs a fungal essential gene and protein (see title, abstract and page 17). Spaltmann et al. do not specifically teach BPL1, however, Polyak et al. (The Journal of Biological Chemistry, vol. 274, no. 46 November 1999) teach BPL1 from

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fungi and role of its terminal domain for complete activity of the fungus (see title, abstract and page 32847). Therefore it would have been *prima facie* obvious to one of ordinary skill in the art to combine the teachings of Spaltmann et al. and Polyak et al. to obtain the claimed invention.

Therefore, the technical feature linking the inventions of groups I-IV does not constitute a special technical feature as defined by the PCT Rule 13.2, as it does not define a contribution over the prior art. As set forth above, each of group I-IV has a special technical feature that is not required for the other groups.

The special technical feature of group I is a method of screening or testing for candidate antifungal compound that impairs BPL1.

The special technical feature of group II is a modified eukaryotic cell.

The special technical feature of group III is a compound.

The special technical feature of group IV is a method for treatment of fungal infection.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Species Election

5. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- a. If applicants elect group I, then there is additional election of species.
 - 1a. please choose one of the species of fungi from claim 3.
- b. If applicants elect group III, then there is additional election of species.
 - 1b. please choose one of the species of fungi from claim 11.
- c. If applicants elect group IV, then there is additional election of species.

1c. please choose one of the species of fungi from claims 15 and 21.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The species are shown to be distinct because they are drawn to a plurality of disclosed patentably distinct species of structurally and functionally distinct fungi.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) is generic: 1, 4, 10, 11, 18 and 19.

Conclusion

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol Shahn an-Shah whose telephone number is 571-

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272-0863. The examiner can normally be reached on Monday-Friday 7:30 AM-5:00 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shannon Foley can be reached on 571-272-0898.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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March 26, 2008

/Shanon A. Foley/
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